

2009 DRAFTING REQUEST

Bill

Received: **07/17/2009**

Received By: **rnelson2**

Wanted: **As time permits**

Identical to LRB:

For: **Mark Miller (608) 266-9170**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **rnelson2**

May Contact:

Addl. Drafters:

Subject: **Courts - immunity liability**
Courts - limitations

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Miller@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Wrongful death, medical malpractice

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson2 07/17/2009	kfollett 08/07/2009		_____			
	jozalp 07/17/2009			_____			
	rnelson2 07/17/2009			_____			
	jozalp 07/17/2009			_____			
/P1			phenry	_____	mbarman		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			08/07/2009 _____		08/07/2009		
/1	rnelson2 02/09/2010	kfollett 02/09/2010	jfrantze 02/10/2010 _____		mbarman 02/10/2010	mbarman 02/23/2010	

FE Sent For:

<END>

↳ Not
Needed

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	jozalp	1/15f					
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	rnelson2	2/9	Jo	2/10			
	07/17/2009						
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ph/ee

FE Sent For:

<END>

Nelson, Robert P.

From: Miller, Mark
Sent: Wednesday, July 08, 2009 3:37 PM
To: Nelson, Robert P.
Cc: Kuhn, Jamie
Subject: FW: Genirich v. OHIC Insurance Co.

Mr. Nelson,
I left a key word out of my earlier message (see underlined, below)

Sen. Mark Miller

(608) 266-9170

From: Miller, Mark
Sent: Wednesday, July 08, 2009 2:34 PM
To: Nelson, Robert P.
Cc: Kuhn, Jamie
Subject: Genirich v. OHIC Insurance CO.

Mr. Nelson,
I agree with Justice Crooks that the court's decision creates an untenable situation for injured parties who want to bring a wrongful death action where death occurs three or more years after the injury. Justice Crooks in his dissent indicates the existing statute is clear on this point. The court majority obviously does not see the same clarity. Please draft a bill to clarify that the 3 year statute of limitations commences with the death of the injured party. Additionally draft a version that does the same thing, but places a limit of six years from the time of injury. Pasted below is a press report (Wheeler) on the case with a link to the decision.
Thank you.

2009 WI 67

Genrich
Estate of Robert V. Genrich v. OHIC Insurance Co. This is a medical malpractice case focusing on when an injury occurred and the filing of the suit. The majority opinion, by Justice Roggensack, affirmed an Appeals Court decision which affirmed summary judgment for the defendants by the trial court. The majority concluded the estate's claim is time barred and further the wrongful death action was also precluded. Justice Bradley, joined by Chief Justice Abrahamson and Justice Crooks, filed an opinion concurring in part and dissenting in part. Justice Crooks, joined by Chief Justice Abrahamson and Justice Bradley, filed a separate concurring in part/dissenting in part opinion. Justice Crooks argued the wrongful death action could not be filed until there was a death involved.

Sen. Mark Miller

16 Senate District
PO Box 7882, Madison, WI 53707
608-266-9170
608-266-5087 (fax)
Sen.Miller@legis.wi.gov



PI
gf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Gen

- 1 AN ACT ...; **relating to:** the statute of limitations for wrongful death claims
2 arising out of medical malpractice.

Analysis by the Legislative Reference Bureau

X Under current law, wrongful death claims are subject to the statute of limitations (time limit) under either the general personal injury statute or the medical malpractice statute. This time limit is counted from the time specified in the relevant statute. After the time limit has elapsed, the claim is time barred. For a wrongful death claim that is not based on medical malpractice, the limit is three years from the person's death. However, Wisconsin courts have concluded that wrongful death claims caused by medical malpractice are subject to the medical malpractice statute of limitations. This limit is three years from the injury, or one year from the date the injury was or should have been discovered, for up to five years after the malpractice. The court held in *Estate of Genrich v. OHIC Ins. Co.*, 2009 WI 67, that the time limit for a wrongful death action caused by medical malpractice is counted from the date of the deceased person's injury instead of the date of death.

This bill reverses that decision. Under this bill, the time limit on all wrongful death claims is counted from the date of the person's death. The wrongful death claim, even if caused by medical malpractice, exists for three years from the person's death, for up to six years after the malpractice.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 893.55 (1m) (intro.) of the statutes is amended to read:

893.55 (**1m**) (intro.) Except as provided by subs. (2), ~~and (3), and (3m)~~, an action to recover damages for injury arising from any treatment or operation performed by, or from any omission by, a person who is a health care provider, regardless of the theory on which the action is based, shall be commenced within the later of:

History: 1979 c. 323; 1985 a. 340; 1995 a. 10; 2003 a. 111; 2005 a. 183; 2007 a. 96. ✓

SECTION 2. 893.55 (3m) of the statutes is created to read:

893.55 (3m) An action under s. 895.03 to recover damages for death arising from any treatment or operation performed by, or from any omission by, a person who is a health care provider shall be commenced within the time limit under s. 893.54 (2), except that an action may not be commenced under this paragraph more than six years from the date of the act or omission.

History: 1979 c. 323; 1985 a. 340; 1995 a. 10; 2003 a. 111; 2005 a. 183; 2007 a. 96.

SECTION 3. 895.03 of the statutes is amended to read:

895.03 Whenever the death of a person shall be caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured; provided, that such action shall be brought for a death caused in this state. An action for damages under this section accrues on the date of the person's death.

(END)

(END)



500a 2/9
State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3146/01
RPN:kjf:ph

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2009 Bill

Regen

- 1 AN ACT *to amend* 893.55 (1m) (intro.) and 895.03; and *to create* 893.55 (3m) of
2 the statutes; **relating to:** the statute of limitations for wrongful death claims
3 arising out of medical malpractice.

Analysis by the Legislative Reference Bureau

Under current law, wrongful death claims are subject to the statute of limitations (time limit) under either the general personal injury statute or the medical malpractice statute. This time limit is counted from the time specified in the relevant statute. After the time limit has elapsed, the claim is time barred. For a wrongful death claim that is not based on medical malpractice, the limit is three years from the person's death. However, Wisconsin courts have concluded that wrongful death claims caused by medical malpractice are subject to the medical malpractice statute of limitations. This limit is three years from the injury, or one year from the date the injury was or should have been discovered, for up to five years after the malpractice. The court held in *Estate of Genrich v. OHIC Ins. Co.*, 2009 WI 67, that the time limit for a wrongful death action caused by medical malpractice is counted from the date of the deceased person's injury instead of the date of death.

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SECTION 3. 895.03 of the statutes is amended to read:

895.03 Recovery for death by wrongful act. Whenever the death of a person shall be caused by a wrongful act, neglect or default and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured; provided, that such action shall be brought for a death caused in this state. An action for damages under this section accrues on the date of the person's death.

(END)

Barman, Mike

From: Libbey, Heather
Sent: Tuesday, February 23, 2010 2:28 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-3146/1 Topic: Wrongful death, medical malpractice

Please Jacket LRB 09-3146/1 for the SENATE.